

Readopt Ins 1800, effective 07-01-99 (Document #7014), to read as follows:

CHAPTER Ins 1800 CONTINUING CARE RETIREMENT COMMUNITIES

Statutory Authority: RSA 400-A:15; RSA 420-D:17

PART Ins 1801 PURPOSE AND SCOPE

Ins 1801.01 Purpose. The purpose of this chapter is to implement RSA 420-D wherein the general court has provided for the regulation of continuing care retirement communities in order to protect the older citizens of the state.

Ins 1801.02 Scope. This chapter shall apply to all continuing care retirement communities.

PART Ins 1802 DEFINITIONS

Ins 1802.01 Definitions.

(a) For the purposes of this chapter, the definitions appearing under RSA 420-D:1 shall apply whenever any word or phrase defined under RSA 420-D:1 is used in this chapter.

(b) With respect to the following words or phrases used in this rule, but which are not defined under RSA 420-D:1, the following definitions shall apply:

(1) "Escrow date", as used in RSA 420-D:10, IV, means the date entrance fees subject to RSA 420-D:10 are placed in an escrow account pursuant to RSA 420-D:10, I.

(2) "Continuing Care Retirement Community (CCRC)" means any facility or other entity providing continuing care and soliciting New Hampshire residents to enter into a resident contract.

(3) "General court" means the assembled senate and house of representatives of the state of New Hampshire as constituted by the constitution of the state of New Hampshire.

(4) "Health care provider" means any physician, hospital, nursing home, visiting nurse association or any other institution, organization or person who furnish health care services as defined in RSA 420-C:2.

(5) "Major changes", for the purposes of RSA 420-D:7, II(c), means any change in or affecting the operation of the CCRC which causes or is estimated to cause an increase or decrease of 10 percent or more in any line item appearing on either the balance sheet, statement of income and expenses or the statement of

changes in financial position submitted as part of the CCRCs annual report required by RSA 420-D:7, I. The term does not include an increase or decrease in any line item of less than \$1,000, the percentage increase or decrease notwithstanding.

(6) "Market value" means, with respect to any security or other asset which is tradable on a recognized financial exchange, the closing price as of the last day the security or other asset was traded on the exchange where the majority of trading in the security or other asset takes place.

(7) "National Association of Insurance Commissioners (NAIC)" means the organization of insurance regulators from the 50 states, the District of Columbia and United States territories which provides a forum for the development of uniform regulatory policy.

PART Ins 1803 CERTIFICATE OF AUTHORITY

Ins 1803.01 Application Procedures.

(a) All CCRCs seeking a certificate of authority shall file an application on insurance department form Ins-CCRC-2, described in (c) below.

(b) In addition to the information specified by the application form described in (c) below, the following additional information or supporting material shall accompany each application:

(1) The disclosure statement as described under RSA 420-D:4 and Ins 1808;

(2) A statement indicating any other state or federal licensure or certification which the continuing care facility may have or be required to have and the current status of such licensure or certification;

(3) The appropriate application fee pursuant to Ins 1809; and

(4) Notarized documents, which shall include the name, address, telephone number and principal business activities of the escrow agent, indicating that an escrow account for entrance fees has been established, when RSA 420-D:10 requires an escrow account for these fees.

(c) The applicant shall provide the following on Ins-CCRC-2:

(1) The name of the continuing care facility;

(2) The type of business organization of the continuing care facility;

(3) Under which state's laws the facility is organized:

(4) The facility's home address, if within the United States or the United States branch office if the home address is outside of the United States;

(5) The principal mailing address;

(6) Whether the department ever issued a temporary certificate of authority to the applicant and, if yes, the date of expiration;

(7) Certification that the applicant, if issued a certificate of authority, will abide by the applicable rules of the department;

(8) Certification that the applicable requirements of RSA 420-D have been met;

(9) Whether the license or authority of the CCRC facility, or affiliated facility of a controlling organization, has ever been revoked, suspended or canceled in any jurisdiction;

(10) Whether any previous application of the CCRC facility, or affiliated facility of a controlling organization, for a license or authority has been denied in any jurisdiction;

(11) If an affirmative answer is given to the information requested in (9) or (10) above, the details of any revocation, suspension, cancellation or denial; and

(12) Authorized signature indicating that, to the best of the signer's knowledge and belief, the information in the application is true and complete.

(d) The commissioner shall act upon applications received within a reasonable time, as set forth in RSA 541-A:29,II(a).

(e) CCRCs who have applications pending shall keep their application and any accompanying information or supporting material current, and file any amendments or other changes on a timely basis.

(f) Any applicant whose application is rejected shall be entitled to a hearing in accordance with the provisions of RSA 541, RSA 541-A and rule Ins 200 and shall be so notified.

Ins 1803.02 Revocation or Suspension.

(a) The commissioner shall not revoke or suspend a certificate of authority issued to any CCRC except upon notice and hearing and written findings of fact that one or more of the conditions specified in RSA 420-D:5, I exist.

(b) Any hearing which the commissioner shall convene in order to exercise the power granted by RSA 420-D:5 shall be considered as an "adjudicative proceeding" as defined under RSA 541-A:1, I.

(c) Such proceedings shall be governed by the following:

(1) In proceeding against any CCRC for the purpose of revoking or suspending its certificate of authority, the commissioner shall provide the CCRC with reasonable notice of hearing. Such notice of hearing shall be in accordance with RSA 541-A:31, III and rule Ins 200.

(2) Hearings conducted pursuant to RSA 420-D:5 and this section shall be conducted pursuant to all relevant provisions of RSA 541-A and rule Ins 200.

(3) Any prehearing conferences shall be held pursuant to rule Ins 203.05; and

(4) The findings of the hearing officer and any order upon such findings shall be made pursuant to RSA 541-A:35 and rule Ins 203.09.

(d) When the commissioner finds that public health, safety or welfare requires emergency action, the commissioner, as authorized under RSA 541-A:30, III shall order an immediate suspension of a certificate of authority. In so doing, the commissioner shall proceed according to Ins 203.02.

(e) Requests for rehearings shall be made in writing and shall be made pursuant to the provisions of RSA 541. All appeals from orders issued by the hearing officer shall be made pursuant to the provisions of RSA 541.

PART Ins 1804 ANNUAL REPORTS

Ins 1804.01 Annual Reports.

(a) Each CCRC who uses the calendar year as its fiscal year shall submit a report on or before May 1 of each year, detailing its fiscal status as of the close of business on December 31 of the just completed calendar year .

(b) Each CCRC who uses an annual period other than the calendar year as its fiscal year shall submit a report detailing its financial status as of the close of business on the last day of its fiscal year within 120 days after the close of the fiscal year.

(c) CCRCs holding one or more certificates of authority shall file separate annual statements for each certificate held.

(d) The annual report required from each CCRC pursuant to this section shall include the following:

(1) The most recent disclosure statement of the CCRC as required under RSA 420-D:4.

(2) Financial statements audited by an independent certified public accountant, which shall contain for 2 or more annual periods, at a minimum, the following information:

- a. A balance sheet;
- b. A statement of income and expenses;
- c. A statement of equity or fund balances;
- d. A statement of changes in financial position;
- e. The accountant's opinion; and

f. All notes to the financial statements considered customary or necessary to full disclosure and adequate understanding of the financial statements, the financial condition of the facility, and the operation.

(3) For the first full fiscal year wherein the CCRC has been occupied by one or more residents and for every two years thereafter, an actuarial report, including a balance sheet and statement of operations, prepared in accordance with the "Actuarial Standard of Practice No. 3, Practices Relating to Continuing Care Retirement Communities" adopted July, 1994 by the American Academy of Actuaries' Actuarial Standards Board; and

(4) If applicable, a statement of entrance fee escrow account balances which shall include the following:

- a. The date on which the just completed fiscal year ended;
- b. The name of the provider;
- c. The city or town in which the provider is located;
- d. The escrow account balances as of the beginning of the fiscal year;

- e. The escrow payments received during the fiscal year;
- f. Interest credited to account balances;
- g. Payments made to residents, prospective residents or beneficiaries;
- h. Interest released to the provider;
- i. Entrance fees earned; and
- j. The escrow account balances as of the end of the fiscal year.

(e) Upon written notice to the CCRC, the commissioner shall require the CCRC to submit any one or more of the financial statements listed under (d) above on a more frequent basis than annually, when any of the following conditions apply:

(1) The annual reports for the most recently completed fiscal year show that the CCRC operated a loss greater than 5 percent of the monthly maintenance fees received;

(2) The annual reports for the most recently completed fiscal year showed a total surplus equal to less than 10 percent of total assets;

(3) The annual reports for the most recently completed fiscal year estimated a loss for the succeeding year greater than 5 percent of the estimated monthly maintenance fee revenues;

(4) The annual reports for the most recently completed fiscal year showed a decrease in assets of more than 5 percent or an increase in liabilities of more than 10 percent; and

(5) An audit conducted by the commissioner results in a change in surplus of 25 percent or more.

(f) Upon written notice to the CCRC, the commissioner shall require the CCRC to submit any journals, ledgers or other records which serve as back-up material for any one or more of the financial statements listed under (d) above. The commissioner shall make such requests whenever it is necessary to verify the accuracy of the financial statements included as part of the CCRCs annual report.

(g) To be considered complete upon submission, the financial statements listed under (d) above shall include complete answers to all general interrogatories and all notes to the financial statements which are considered customary or necessary to full disclosure and adequate understanding of the financial statements, the financial condition of the CCRC, and the operation.

(h) The financial statements required by (d) (3) above shall be accompanied by a statement of actuarial opinion indicating whether the data and assumptions used are appropriate, whether the methods employed are consistent with sound actuarial principles and practices and whether provision has been made for all actuarial liabilities and related statement items which ought to be established.

(i) The actuarial opinion shall also contain appropriate comment on the CCRCs perceived ability to operate the CCRC as a going concern and the impact of any actuarial deficit. If the actuary is unable to form a needed opinion, or if the opinion is adverse or qualified, the statement of actuarial opinion shall specifically state the reason. The actuarial opinion shall be rendered by a qualified actuary as defined in Ins 901.04.

PART Ins 1805 LIQUID RESERVES

Ins 1805.01 Liquid Reserves.

(a) When a CCRC calculates whether the value of its liquid reserves meets the amount RSA 420-D:8 requires, the CCRC may include the values of the assets listed below:

(1) Cash held in an interest-bearing account of a financial institution;

(2) The following if the instrument is easily converted to cash within a reasonable period of time:

a. Certificates of deposit issued by a financial institution;

b. Money-market funds issued by an "investment company" as defined by U.S.C. Title XV, Section 80a-3;

c. Acceptable negotiable securities which shall include only United States government obligations and corporate debt obligations rated AA or AAA in Moody's or Standard and Poor's corporate bond rating publication or a 1 or 2 rating by the NAIC valuation of securities publication; and

d. Commercial paper in the form of promissory obligations of an issuer with an original maturity date not exceeding 9 months from the date of issuance, having the highest rating in a rating publication indicated in c. above.

(b) For the purpose of determining whether the assets included in the liquid reserve account of a CCRC satisfy the liquid reserve requirement of RSA 420-D:8, such assets held in the form of cash shall be valued at their actual value in U.S. currency. Assets held in any other form shall be valued at their market value.

(c) For the purpose of determining the amount of the liquid reserve that a CCRC shall maintain, the term "12 months principal and interest payments" appearing in RSA 420-D:8 means the CCRCs liabilities which would be reported to show the statutory liquid reserve as of the end of current year on the balance sheet that would be included with the actuarial report, as required by Ins 1804, as if an actuarial report had been prepared for the 12 calendar months ending on the last day of the previous month.

(d) For the purpose of determining the amount of the liquid reserve that a CCRC shall maintain, the term "that portion of 2 months' operating expenses which relates to life care residents" appearing in RSA 420-D:8 mean those expenses which are reported on Schedule K of the annual statement blank required by Ins 1804 and which would be included the amount of the estimated expenses for the 2 calendar months following the current month.

(e) The liquid reserve required at any point in time shall be the sum of the amounts determined in accordance with (c) and (d) above. This amount shall be referred to as the minimum liquid reserve.

(f) The commissioner shall require placement of the liquid reserve in an escrow account whenever the commissioner finds through an audit or examination that a CCRC is experiencing financial difficulty.

(g) For the purpose of this provision, financial difficulty includes, but shall not be limited to, any one or more of the following circumstances:

- (1) Payments on accounts payable or notes payable being made on average 45 days or more after the due date;
- (2) A major supplier places the CCRC on a C.O.D. basis;
- (3) A tax lien is filed against the CCRC;
- (4) 50 percent of accounts receivable, except Medicare or Medicaid, average more than 45 days;
- (5) Expenses exceed revenues for 3 or more consecutive months.

(h) All such escrow accounts shall comply with the rules for entrance fee escrow accounts as set forth under Ins 1807. In the course of establishing an escrow account, the CCRC shall advise the commissioner as to the name, address, telephone number and principal business activities of the escrow agent. The CCRC shall notify the commissioner of any subsequent change in escrow agent by providing the name, address, telephone number and principal business activities of the new escrow agent within 5 business days.

PART Ins 1806 PROCEDURES FOR OBTAINING AND EXTENDING LIENS

Ins 1806.01 Procedures for Obtaining and Extending Liens.

(a) The commissioner shall file a lien on all real and personal property of a CCRC whenever the commissioner has evidence showing that the CCRC has breached its contracts with residents or is engaged in activity which is harmful to residents' physical or mental well-being. Any such lien shall be filed and administered in accordance with all applicable laws respecting such liens.

(b) When the commissioner forecloses a lien, the commissioner shall prepare a plan to distribute any proceeds from the foreclosure in a manner that will best permit the satisfaction of any resident contracts in effect at that time. The commissioner shall give a written copy of this plan to each contractholder affected by the foreclosure, and shall allow contractholders to comment on the plan before the commissioner distributes any proceeds. The commissioner shall allow affected contractholders to submit comments for a period of at least 15 days after the date on which the commissioner mailed copies of the plan.

(c) With respect to the lien property, liens established by the commissioner shall not have priority over mortgages, security agreements, lease agreements, or installment sales agreements on property not otherwise encumbered which a CCRC has entered into with an issuer of bonds or notes and bonds which are secured by resolution, ordinance, or indenture of trust if such mortgages or agreements were duly recorded at least 4 months prior to the institution of rehabilitation or liquidation proceedings.

PART Ins 1807 ENTRANCE FEE ESCROW ACCOUNTS**Ins 1807.01 Entrance Fee Escrow Accounts.**

(a) Escrow accounts established to hold entrance fees pursuant to RSA 420-D:10, I or accounts required by the commissioner to hold liquid reserves, shall comply with each of the following:

(1) Escrow account funds shall be kept and maintained in an account separate and apart from the business account(s) of the CCRC;

(2) All escrow account funds derived from entrance fees shall remain the property of the resident, prospective resident, or other person making payment on behalf of a resident or prospective resident and shall not be subject to any liens or charges by the escrow agent, or judgments, garnishments, or creditor's claims against the CCRC, until the funds have been released to the CCRC as provided in RSA 420-D:10, III;

(3) Interest in an escrow account may be released to a CCRC when any portion of the corresponding entrance fee is released to the CCRC or when the resident makes his or her first monthly payment, whichever occurs first;

(4) All records pertaining to the escrow account shall be available for inspection or audit by the commissioner at any time;

(5) Any CCRC that establishes an escrow account with an escrow agent shall enter into a written agreement with the escrow agent which:

a. States that its purpose is to protect the resident or prospective resident;

b. Authorizes the commissioner to inspect the records of the escrow agent relating to the escrow account; and

c. Provides that, upon order of the commissioner or a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or a portion thereof, to the CCRC, resident, prospective resident, or other person entitled thereto as ordered;

(6) A copy of each escrow agreement entered into by the CCRC shall be filed with the commissioner for approval; and

(7) Any interest payable on entrance fees placed in escrow pursuant to RSA 420-D:10, I shall be paid at a rate of interest equal to the rate then charged member banks by the Federal Reserve Bank, plus one percent.

(b) The release of any funds from an escrow account pursuant to RSA 420-D:10, III shall be subject to the following:

(1) When the escrow agent releases funds to a CCRC, the agent shall adhere to the requirements of RSA 420-D:10, III; and

(2) Upon the release of any funds from an escrow account to either a CCRC or the resident or to another person who paid an entrance fee on behalf of a resident, the escrow agent shall obtain a signed and dated receipt from the person receiving the funds. If the funds released exceed \$10,000, a notary public or a justice of the peace shall witness the receipt.

(c) In lieu of maintaining entrance fee payments in escrow accounts, a CCRC may, upon the commissioner's approval, post bond, negotiable securities, or a letter of credit, with the commissioner.

(d) Approval of the commissioner shall be subject to the following conditions:

(1) The institution providing the bond or the letter of credit shall be acceptable to the commissioner. In the case of a letter of credit, the institution issuing the letter of credit shall be a qualified United States financial institution as defined in RSA 405:45, VI. In the case of a bond, the surety institution issuing the

bond shall be acceptable if it is a surety company authorized to transact business in New Hampshire;

(2) The amount of the bond, negotiable securities, or line of credit specified in the letter of credit shall be set by the commissioner as provided in (5) below;

(3) Negotiable securities posted in lieu of escrow shall, for the purpose of determining if they satisfy the amount set by the commissioner, be valued at 75 percent of their market value. After posting the initial negotiable securities, the CCRC shall be responsible for monitoring the market value of the negotiable securities on deposit;

(4) Should the negotiable securities on deposit at any time be valued at less than 133.3333 percent of the amount required, the CCRC shall post additional negotiable securities as required so that the negotiable securities posted shall at all times be equal to 133.3333 percent of the amount required. Negotiable securities posted shall be securities that are tradable on the New York Stock Exchange, the American Stock Exchange or other comparable securities exchange;

(5) In setting the initial amount required for the bond, negotiable securities, or the line of credit specified in the letter of credit, whichever is to be posted, the commissioner shall take into consideration the amount of the entrance fees, interest accrued thereon, and other fees to be charged in addition to the number of life interest or long-term leases to be offered, granted or sold. The commissioner shall revise the amount required to be held in escrow using the same procedure used to set the initial amount required upon review of the CCRCs most recent financial statements; and

(6) The CCRC requesting that the commissioner approve posting of a bond, negotiable securities, or letter of credit in lieu of maintaining escrow accounts shall demonstrate to the commissioner that it meets a high standard of financial worthiness;

(7) To demonstrate that it meets the required standard, the CCRC shall provide the commissioner with data showing either:

a. That its standard financial statement ratios are better than the industry-wide continuing care facility average by 25 percent or more; or

b. That its liquid assets as shown on the most recent balance sheet, but not including the liquid reserve as determined under Ins1805, are equal to 300 percent of the amount set by the commissioner for the bond, negotiable securities, or letter of credit to be posted;

(8) The commissioner shall be a party to any bond posted;

(9) No bond posted shall be cancelable except with 90 days prior notice to the commissioner; and

(10) CCRCs posting negotiable securities with the commissioner shall enter into a custodian agreement. The custodian agreement shall be executed on insurance department form Ins-CCRC-3 described in (f) below.

(e) A CCRC posting negotiable securities shall deposit said securities in a custodial account to be held by the custodian in trust for the benefit and security of policyholders, claimants or creditors of the CCRC.

(f) A custodian agreement shall:

(1) Be signed by the facility and the custodian;

(2) State the amount maintained on deposit with the custodian;

(3) Hold securities placed in the custodian account exclusively for the commissioner as trustee in trust for the benefit of New Hampshire policyholders, claimants, or creditors with a claim against the facility;

(4) Provide that non-registered securities may be held as follows:

a. Coupon/bearer form;

b. At book entry in a federal reserve bank; or

c. At the depository trust company as either a direct bank or indirect depository participant;

(5) Provide that the custodian is liable to the facility and the commissioner for the custodian's negligence, willful misconduct or lack of good faith;

(6) Provide that no securities in the account nor any principal is released except upon written request of the facility and written assent to or in the name of the commissioner;

(7) Provide that the facility may withdraw securities from the account, with the approval of the commissioner;

(8) Provide that the commissioner will approve withdrawals under the circumstances in (7) above so long as other securities are deposited with the custodian with market value equal to those withdrawn;

(9) Provide that the custodian may surrender any security held under the agreement for payment upon maturity or redemption so long as the proceeds

thereof are held in a principal cash account maintained as part of the custodial account in accordance with the custodial agreement;

(10) Provide that all transactions and withdrawals involving deposited securities or principal cash be consummated only upon prior receipt of instructions from the company and written assent of the trustee;

(11) Provide that the custodian send advice to the commissioner of security and cash transactions within 10 days after a transaction; and

(12) Provide that the custodian send to the commissioner a certificate of account assets by February 1 for the preceding calendar year through December 31

PART Ins 1808 STANDARDS FOR RESIDENT CONTRACT AND DISCLOSURE STATEMENTS

Ins 1808.01 Requirements for Documents.

(a) Documents given to residents and prospective residents, including contracts with residents and disclosure statements, shall:

(1) Use language that a person of average intelligence and education can read and understand;

(2) Present information in a logical sequence and in a clear and direct fashion;

(3) Avoid complex and compound sentences;

(4) Use words in a manner which shall convey their commonly understood meanings;

(5) Include definitions for words or terms which cannot properly be explained or qualified in the text;

(6) Use frequent section headings to permit ease in locating provisions;

(7) Be printed in easily legible typeface; and

(8) Contain an index, which shall be either the first page of the document or whose location shall be noted on the first page of the document, which lists all section headings used in the document if the document is more than one page in length.

(b) If pre-existing conditions are excluded from the medical care and services available from the CCRC, or limited as to coverage, the term pre-existing condition shall not limit coverage beyond that stated in the following:

"A pre-existing condition is a disease, illness, sickness or physical condition for which medical care, advice or treatment was recommended by or received from a physician within the 5 year period preceding the date the CCRC committed itself to accept the individual as a resident."

(c) This requirement shall apply whether or not the exclusions or limitations are available at an additional charge.

Ins 1808.02 Resident Contract Standards.

(a) All contracts between a CCRC and a resident shall be executed on a form which has been previously approved by the commissioner. To obtain approval for the contract form, the CCRC shall provide the commissioner with duplicate copies of the proposed contract form, a cover letter, in duplicate, a return envelope with return postage and the examination fee required by Ins 1809. The cover letter shall provide a brief description of the main features of the contract form. Upon review of the proposed contract form, the commissioner shall notify the CCRC of approval or disapproval of the form. The commissioner shall approve the proposed contract form if he finds that it complies with all requirements of RSA 420-D and Ins 1808.01

(b) Each contract with resident shall have attached a separate page notifying prospective residents of their right to rescind the contract, as follows:

(1) The notice shall indicate the date the rescission period begins;

(2) The notice shall include a statement to the effect that the prospective resident may rescind and terminate his or her contract or agreement, without penalty or forfeiture, within 10 days of the date the rescission period begins, as specified in (1) above;

(3) The notice shall include a statement that the prospective resident is not required to move into the CCRC before the expiration of the 10 day rescission period and that no other agreement or statement signed by the prospective resident shall constitute a waiver of the right to rescind the contract or agreement within the 10 day rescission period;

(4) The notice shall include instructions advising the prospective resident who wishes to rescind his contract or agreement that:

a. He or she may do so by mailing or delivering a signed and dated copy of the notice, or any other dated written notice, letter or telegram, stating one's desire to rescind the contract or agreement to the CCRC; and

b. Such notice to the CCRC must be mailed to the business address of the CCRC not later than midnight of the date of the last day for rescission, as specified on the notice by the CCRC; and

(5) The notice shall include a portion that the prospective resident can use to notify the CCRC that the prospective resident is canceling the contract or agreement, as permitted by the notice of the right to rescind. This portion shall include a line where the prospective resident may place his signature and write in the date of signature.

(c) The CCRC shall submit to the commissioner for approval any revision(s) or amendment(s) to an approved contract form. This submission shall include duplicate copies of the revised contract or amendment form, a cover letter in duplicate, a return envelope with return postage and the examination fee required by Ins 1809. The cover letter shall list and describe each amendment or revision to the previously approved contract form. Upon review of the amendment(s) or revision(s) to the contract form, the commissioner shall notify the CCRC of approval or disapproval of the form. The commissioner shall approve the amendment(s) or revision(s) to the contract form if he finds that they comply with all requirements of RSA 420-D and this part.

(d) When submitting either a proposed contract form, amendments or revisions to a contract form to the commissioner for approval, the CCRC shall, in a supplement to the cover letter, list every instance where the contract form will use variable language. In this supplement, the CCRC shall describe the complete range of variable language that will appear in the contract form for each instance listed.

(e) All contracts with residents shall be printed in 10 point type or larger and shall be prepared in a manner to ensure legibility and ease of reading.

(f) A valid and binding contract with a resident shall be signed by the CCRC and each resident who is admitted to the CCRC. An authorized representative may sign the contract with resident on behalf of either party.

(g) If the resident has agreed to purchase, at an additional price, optional products or services beyond those included in the entrance and periodic fees, a separate page shall be attached specifying the product or service purchased, and the cost of each including any installation charge. Each such separate page shall be executed by the parties identified in paragraph (f).

(h) The contract with resident shall be distributed as follows:

(1) A copy of the current contract with resident form shall be attached as an appendix to each disclosure statement or amended disclosure statement filed with the commissioner;

(2) A copy of the current contract with resident form shall be attached to each disclosure statement given to a prospective resident, unless the individual previously received a disclosure statement with a current contract with resident form attached thereto;

(3) A copy of the current contract with resident form may be given to current residents; and

(4) If a contract with resident form is not attached to the disclosure statement, as authorized under paragraph (2) above, a separate page shall be attached stating that a copy of the contract with resident form was omitted.

(i) Each CCRC shall maintain copies of each contract with resident form it has executed with a resident until the conclusion of the next succeeding examination by the insurance department following the date the contract ceases to be in force.

Ins 1808.03 Disclosure Statements.

(a) A CCRC shall submit all disclosure statements to the commissioner for prior approval. No CCRC shall distribute a disclosure statement in any manner to prospective residents, residents or residents' authorized representatives, until the commissioner has approved the format of the disclosure statement.

(b) To obtain approval for the disclosure statement, the CCRC shall submit to the commissioner:

(1) Duplicate copies of the proposed disclosure statement;

(2) A cover letter in duplicate, which shall briefly describe the main features of the disclosure statement;

(3) A return envelope with return postage; and

(4) The examination fee required by Ins 1809.

(c) The commissioner shall approve the proposed disclosure statement if the commissioner finds that it complies with all requirements of RSA 420-D and this part.

(d) The commissioner shall notify the CCRC when the commissioner has approved or disapproved the disclosure form.

(e) The CCRC shall submit to the commissioner for his approval any revision(s) or amendment(s) to an approved disclosure statement. This submission shall include duplicate copies of the revised disclosure statement or amendment(s) thereto, a cover letter in duplicate, a return envelope with return postage and the examination fee required by Ins 1809. The cover letter shall list and describe each amendment or revision made to

the previously approved disclosure statement. Upon review of the amendment(s) or revision(s) to the disclosure statement, the commissioner shall notify the CCRC of his approval or disapproval. The commissioner shall approve the amendment(s) or revision(s) to the disclosure statement if he finds that they comply with all requirements of RSA 420-D and this part.

(f) In addition to the requirements of RSA 420-D:4 and Ins 1808.01, the disclosure statement shall comply with the following rules:

(1) The disclosure statement shall include a statement advising the prospective resident that New Hampshire law requires the CCRC to provide the prospective resident with a disclosure statement before the initial transfer of funds and before the prospective resident consents to any contract with the CCRC; and

(2) The notice required by RSA 420-D:4, I shall appear on the cover page of the disclosure statement in a prominent location and typeface.

(g) Changes in the operation of a CCRC which require an amendment to the disclosure statement shall include the following:

(1) Changes in the board of directors, officers, managing or general partners, administrators or trustees and managers which affect the management of the CCRC. The CCRC shall file biographical affidavits by these individuals with the commissioner at the time the CCRC submits an amended disclosure statement;

(2) Any new or additional mortgages, liens, security interests, loan commitments, long-term financing arrangements or leases, which materially affects the real property of the CCRC. The CCRC shall file a copy of all pertinent documents evidencing the transactions with the commissioner at the time the CCRC submits an amended disclosure statement; and

(3) Other material changes in the financial or factual information contained in the disclosure statement or any statement in support of the CCRCs original application for a certificate of authority. The CCRC shall file explanatory material and copies of pertinent documents concerning the material changes with the commissioner at the time the CCRC submits an amended disclosure statement.

(h) All disclosure statements shall be printed in 10 point type or larger.

PART Ins 1809 FEES

Ins 1809.01 Fees.

(a) Upon each application for a permanent certificate of authority, the applicant shall pay a fee of \$800.00 to the state of New Hampshire.

(b) Upon each filing of the annual report as required pursuant to Ins 1804, the CCRC shall pay a fee of \$800 to the state of New Hampshire.

(c) Upon submitting a contract with resident form or any amendments or revisions to the contract with resident form to the commissioner for approval, a CCRC shall pay a fee of \$80.00 to the state of New Hampshire.

(d) Upon each application for a certificate of authority which shall be required by the commissioner pursuant to RSA 420-D:13, II, the applicant shall pay a fee of \$400.00 to the state of New Hampshire.

(e) When the commissioner audits a CCRC pursuant to RSA 420-D:23, the CCRC shall bear the expense of the examination as follows:

(1) The commissioner shall present quarterly bills for the expenses charged to all CCRCs who have been audited or who are scheduled for audits in the current fiscal year of the insurance department. The first 3 quarterly bills shall be estimated bills. The final quarterly bill shall be for actual charges made that fiscal year;

(2) The CCRC shall be liable for the expenses associated with an examination in accordance with RSA 400-A:37; and

(3) All such expenses charged and billed shall be payable to the state of New Hampshire. However, as authorized by RSA 400-A:37, VIII, the CCRC shall pay the travel expense of the examination directly to the individual conducting the examination.

PART Ins 1810 AUDITS AND INVESTIGATIONS

Ins 1810.01 Audits and Investigations.

(a) The commissioner shall audit the books and records of each licensed CCRC at least once every 5 years.

(b) Upon completion of any audit conducted by the commissioner, a written audit report shall be prepared.

(c) The audit report shall be submitted to the CCRC audited. The examined CCRC may object to the report within 30 days from the receipt thereof. Any such objection shall take the form of a request for a hearing in compliance with the procedures described under Ins 200.

(d) When the examined CCRC has raised an objection, the commissioner shall hold a hearing in compliance with the hearing procedure established by Ins 200 and RSA 541-A:30-a through RSA 541-A:38.

(e) The commissioner shall maintain the report on file in the department until the commissioner has issued a final adjudication. Until such report is final, it shall be absolutely privileged and therefore not available for public inspection.

(f) After the commissioner has issued an adjudication after a hearing upon the objection the commissioner shall make available those portions of the report for public inspection in accordance with RSA 400-A:37, VI.

PART Ins 1811 TRANSFER OR SALE OF INTEREST

Ins 1811.01 Transfer or Sale of Interest.

(a) When a transfer or sale of interest is proposed, the commissioner shall receive notice pursuant to RSA 420-D.

(b) Such notice shall include:

(1) A biographical affidavit, using department form Ins-CCRC-4 described in (d) below, for any proposed new officer, trustee, investor, owner with more than 5% ownership, or new CCRC manager;

(2) The most recent balance sheet and income statement of any party who is proposed to acquire an ownership interest of 5% or more, if the transfer or sale of interest involves less than 50% but more than 5% of the assets of the continuing care facility;

(3) A detailed account of any changes that will occur in the debt structure of the continuing care facility or the continuing care CCRC, and

(4) A detailed account of the resulting debt service requirements, with notes explaining how these debt service requirements differ from the requirements in existence prior to the proposed transfer or sale.

(c) When RSA 420-D:13, II requires a new CCRC to apply for a certificate of authority, the application procedures of Ins 1803 shall apply.

(d) The biographical affidavit, Ins-CCRC-4, shall include the following information:

(1) The name and address of the continuing care provider;

(2) The name of the affiant;

(3) A listing of, and reason for, any name changes, if any, for the affiant;

(4) A listing of any other names used by the affiant at any time;

- (5) The affiant's social security number;
- (6) The date and place of birth of the affiant;
- (7) The affiant's business address and telephone number;
- (8) A listing of the affiant's residences for the last 10 years starting with the current address and showing the address, city or town, state and dates the affiant resided at each address;
- (9) The educational background of the affiant, including the name and location of colleges or universities attended, the dates of attendance, and any degrees earned;
- (10) A listing of the affiant's membership in professional societies and associations;
- (11) The affiant's present or proposed position with the provider;
- (12) A listing of the complete employment record of the affiant up to and including present jobs, positions, directorates, or officerships for the past 20 years giving the dates of employment, the name and address of each employer and the job title held;
- (13) A statement as to whether or not the present employer may be contacted;
- (14) A statement as to whether or not former employers may be contacted;
- (15) A statement as to whether or not the affiant has ever been in a position which required a fidelity bond;
- (16) If the answer to (15) above is affirmative, and if any claims were made on the bond, the affiant shall state the details of each such claim;
- (17) A statement as to whether or not the affiant has ever been denied an individual or position schedule fidelity bond or if any such bond has ever been cancelled or revoked;
- (18) If the answer to (17) above is affirmative, a statement as to the details of each denial, cancellation or revocation;
- (19) A listing of the professional, occupational, and vocational licenses issued by any public or governmental licensing agency or regulatory authority which the affiant presently holds or has held in the past, including the date the

license was issued, the issuer of the license, the date the license was terminated and the reason for termination;

(20) A statement as to whether or not the affiant has, within the last 10 years, been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, or had any such license held suspended or revoked;

(21) If the answer to (20) above is affirmative, the affiant shall state the details of each denial, cancellation, or revocation;

(22) A listing of the continuing care providers or health care facilities in which the affiant controls, directly or indirectly, or owns legally or beneficially 10 percent or more of the outstanding voting stock, in voting power;

(23) A statement by the affiant as to whether the affiant or members of his or her immediate family will subscribe to or own, beneficially or of record, any shares of stock in the continuing care provider or in any affiliate of the continuing care provider;

(24) If any of the shares or stock noted in the answer to (23) above are pledged or hypothecated in any way, the affiant shall provide an explanation of these circumstances;

(25) A statement by the affiant as to whether or not he or she has ever been adjudged bankrupt;

(26) A statement by the affiant, and details of if affirmative, as to whether the affiant has ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or been pardoned for conviction of or pleaded guilty or nolo contendere to an information or indictment charging any felony, or charging a misdemeanor involving embezzlement, theft, larceny, or mail fraud, or charging a violation of any corporate securities statute or any insurance law;

(27) Whether the affiant has ever been the subject of any disciplinary proceedings of any federal or state regulatory agency, and details if affirmative;

(28) A statement by the affiant as to whether or not any company has ever been charged as in (26) above, allegedly as a result of any action or conduct on the part of the affiant;

(29) A statement by the affiant as to whether or not the affiant has ever been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of any company or organization which, while the affiant occupied any such position or capacity with respect to it, became insolvent

or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship;

(30) A statement by the affiant, and details if affirmative, as to whether or not the certificate or authority or license to do business of any provider or company of which the affiant was an officer, or director or key management person ever been suspended or revoked while the affiant occupied such position; and

(31) A dated signature of the affiant by which the affiant certifies that he or she is acting on his or her own behalf and that the foregoing statements are true and correct to the best of the affiant's knowledge and belief.

(e) The biographical affidavit described in (d) above shall be notarized by a notary public.

PART Ins 1812 SEVERABILITY

Ins 1812.01 Severability. It shall be the intention of the department that if any provision or clause of this chapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the chapter, which shall be given effect without the invalid provision or application, and to this end the provisions of this chapter shall be severable.

PART Ins 1813 ENFORCEMENT

Ins 1813.01 Violations.

(a) Any person who, or CCRC which, violates the provisions of this chapter shall be subject to enforcement action pursuant to RSA 400-A:15.

(b) No certificate of authority or license shall be suspended or revoked, nor fine assessed without appropriate notice and opportunity for hearing in accordance with rule Ins 200 and the provisions of RSA 541-A:30-a through RSA 541-A:38.

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